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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,585	03/30/2004	Bertram Rupietta	RUPIETTA ET AL. - I	4312
25889	7590	11/16/2006	EXAMINER	
WILLIAM COLLARD COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			DANIELS, MATTHEW J	
			ART UNIT	PAPER NUMBER
			1732	

DATE MAILED: 11/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/813,585

Applicant(s)

RUPIETTA ET AL.

Examiner

Matthew J. Daniels

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 1-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/24/06</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 28 August 2006 has been entered.

### *Double Patenting*

2. The provisional nonstatutory double patenting rejection is withdrawn in view of the terminal disclaimer filed 28 August 2006.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 14-17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Fosse (USPN 4340553) in view of SU 806427 (2/1987, on the 24 July 2006 IDS) and Lewis (USPN 2305017).

**As to Claim 14**, Fosse teaches the basic claimed process including a method for the production of a multi-layer pipe comprising: Pivoting a mold mantle into a stand (Fig. 1, Item 16), filling with a first concrete mixture with a first charging system (Fig. 5, Item 31), distributing and compacting the concrete mixture by means of a rotating and vertically displaceable compacting tool (Fig. 5, Item 28), pivoting the vertical mold mantle out of the stand and removing the pipe from the mold (inherent in that it is subsequently used for its intended purpose).

Fosse is silent to the other claimed limitations, namely the second mixture, and the diameter being reversibly reduced by changing the direction of rotation. However, these aspects would have been *prima facie* obvious for the following reasons:

Lewis teaches application of a second concrete mixture, which is an acid-resistant concrete mixture (Page 1, right column, lines 17-32). Applying it in Fosse's tool would have been obvious.

SU 806427 teaches that it is conventional to use a compacting tool which has a diameter that is reversibly reduced by changing the direction of rotation of the compacting tool (Figs. 2 and 3).

It would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to incorporate the methods of Lewis and SU 806427 into that of Fosse because doing so would (a) provide a composition having improved resistance to wear and moisture propagation to the inner surface of the pipe, and (b) a packing head which is could apply both mixtures simultaneously without changing tools or moving to a different tool. **As to Claim 15**, in view of Fosse's teachings and those of SU 806427, it would have been obvious to return the

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tool to its original diameter in order to prepare it to apply the first mixture. **As to Claim 16**, in SU 806427, note the arrows in Figs. 2 and 3 which show the change in the position of the head, clearly suggesting that the direction is changed, which would obviously have occurred during a change in the direction of rotation. **As to Claim 17**, Fosse teaches that rotation speed is a result-effective variable (1:45-52), depending on whether metering or finishing is being performed (1:36-41). In view of Fosse's teachings, it would have been prima facie obvious to optimize and change rotation speed depending on the desired effect of the compacting process (metering or finishing). See MPEP 2144.05 II and *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

#### ***Response to Arguments***

4. Applicant's arguments filed 28 August 2006 have been fully considered but they are not persuasive. The arguments appear to be on the following grounds:

a) Ottmann does not provide the claimed concrete composition or the change of direction of the compacting tool.

5. These arguments are not persuasive or are moot for the following reasons:

a) Lewis provides the claimed composition, and clear motivation for doing so. SU 806427 provides an apparatus which changes diameter by changing direction (Figs. 2 and 3). In view of these teachings, the remarks are believed to be moot.

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Daniels whose telephone number is (571) 272-2450. The examiner can normally be reached on Monday - Friday, 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJD 11/13/06

*MJD*

*af*  
CHRISTINA JOHNSON  
SUPERVISORY PATENT EXAMINER

*11/13/06*